

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:94CR61
)	
v.)	
)	
MACARIO LUJAN,)	MEMORANDUM OPINION
)	
Defendant.)	
_____)	

This matter is before the Court on the defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Filing No. 596). For the following reasons, the motion will be denied for lack of jurisdiction.

This is the second motion the defendant has filed pursuant to 28 U.S.C. § 2255. Defendant was sentenced on March 28, 1997, to a term of one hundred sixty-eight (168) months to be followed by a term of five (5) years of supervised release. No appeal was taken. On March 9, 1998, defendant filed a motion pursuant to 28 U.S.C. § 2255 (Filing No. 548). The motion was denied on January 29, 1999 (Filing No. 562).

The defendant's current § 2255 motion constitutes a "second or successive motion" within the meaning of 28 U.S.C. § 2255. 28 U.S.C. § 2255; see *United States v. Nicholson*, 231 F.3d 445, 454 (8th Cir. 2000); see also *United States v. Allen*, 157 F.3d 661, 664 (8th Cir. 1998); and *Vancleave v. Norris*, 150 F.3d 926, 927-29 (8th Cir. 1998). A petitioner seeking to file a second or successive § 2255 motion challenging their conviction or sentence must first obtain circuit court certification. 28

U.S.C. § 2255 (2001); *Allen*, 157 F.3d at 664; *U.S. v. Arnold*, 2001 WL 435648 at 1 (D.Minn. 2001). Because the defendant has not received approval from the Eighth Circuit to file a second or successive § 2255 motion, the Court lacks jurisdiction over his claims. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000); *Allen*, at 664; *United States v. Alvarez-Ramirez*, 128 F.Supp.2d 1265, 1267 (C.D.Cal. 2001). For this reason, defendant's motion will be denied without prejudice. A separate order will be entered in accordance with this memorandum opinion.

DATED this 30th day of January, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court